THOUGHTS

ON

EXECUTIVE JUSTICE,

WITH RESPECT TO OUR

CRIMINAL LAWS,

PARTICULARLY ON THE CIRCUITS.

DEDICATED TO THE

JUDGES OF ASSIZE;

And recommended to the Perusal of

All MAGISTRATES; and to all Persons who are liable to serve on CROWN JURIES.

By a sincere Well-wisher to the Public.

—— Vir bonus est quis?
Qui consulta Patrum, qui leges juraque servat,
Quo multæ magnæque secantur Judice lites.

HOR.

LONDON:

PRINTED FOR J. DODSLEY IN PALL-MALL.

M.DCC.LXXXV.

TO THE

JUDGES OF ASSIZE.

MY LORDS,

DEdicating this little performance to your Lordſhips, is ſomething like *Dean Swift*'s Dedication to *Prince Poſterity* — for certainly your Lordſhips' *official* exiſtence is, for the preſent, annihilated; nor will it be brought into *being* till ſome time hence. However, the Author of theſe papers thinks, that there is no harm, in preparing ſome hints, which he hopes may be uſeful; and he is encouraged to think, that,

that, as there is now *nobody* to be found fault with, therefore *nobody* can be offended.

But although *Judges of Aſſize*, &c. do not at this moment exiſt, yet the *Public* does: and indeed its exiſtence is rendered miſerable enough, by the daily-increaſing depredations committed on its ſafety and property. — This is humbly ſubmitted to your Lordſhips' conſideration, and recommended in the moſt earneſt manner to your Lordſhips' ſeaſonable animadverſion.

I have the honour to be,

MY LORDS,

Your Lordſhips'

Moſt devoted humble Servant.

THOUGHTS

ON

EXECUTIVE JUSTICE, &c.

THE honour and welfare of the kingdom in general, as well as the ſecurity and happineſs of individuals, muſt depend on a due adminiſtration of the laws. Without laws to protect the perſons and properties of the people, they muſt become a prey to each other; the *weak*, oppreſſed by the

ſtrong, muſt be liable to the loſs of all enjoyment of liberty and ſafety; the honeſt and induſtrious, plundered by the idle and abandoned, muſt be reduced to poverty and diſtreſs; and even the richeſt and greateſt, muſt be liable to that ſort of dread and diſquiet, which muſt reduce them, in point of comfort, to the ſtandard of the pooreſt and meaneſt of their fellow-ſubjects; perhaps even below this, as thoſe who have moſt to loſe, have moſt to fear. But though there be laws, and ſuch as are admirably calculated to meet with, oppoſe, and cruſh thoſe violences and diſorders, which muſt ever attend a

mere

mere ſtate of nature; yet, if theſe laws are not duly, conſtantly, and impartially enforced and executed, the condition of the people will be but little, if at all, benefited by them. *Vigilance*, *faithfulneſs*, and *activity* in the magiſtrate, will ever be the parents of ſecurity and comfort to the people: where *theſe* prevail, there will be peace and ſafety; but where *theſe* are neglected, there will be diſorder, confuſion, and every evil work.

I am very unhappy, that I can, with the utmoſt truth, refer to the preſent ſtate of this country, for an illuſtration of what has been ſaid on the diſagreeable ſide of the

queſtion. No civilized nation, that I know of, has to lament, as we have, the daily commiſſion of the moſt dangerous and atrocious crimes, inſomuch that we cannot travel the roads, or * ſleep in our houſes, or turn our cattle

* An houſe in *Paris*, a few years ago, was ſuppoſed to have been attempted in the night-time;—the matter ended in the family being diſturbed, and whatever occaſioned this, ſoon ceaſed; but the maſter of the houſe ſaid, that he thought his houſe had been attacked "*par des roſſignols Anglois:*"—which droll expreſſion ſufficiently ſhews, that the frequency of *burglaries* in this country, are ſo far from being unnoticed by our neighbours on the continent, as to have become in a manner *proverbial.*

into

into our fields, without the moſt imminent danger of thieves and robbers. Theſe are increaſed to ſuch a degree in numbers, as well as audaciouſneſs, that the *day* is now little leſs dangerous than the *night* to travel in; and we are not without fatal inſtances of the moſt wanton cruelty and barbarity, exerciſed on many of thoſe unfortunate perſons, who have fallen into the hands of theſe plunderers of the public.

As theſe are, apparently, increaſing evils, they call aloud for redreſs; and we have one comfort yet remaining, which is, that a complete and adequate redreſs is to be found in our laws, when-

ever thoſe laws are reſtored to their vigour and activity, by the ſeveral executive powers, or magiſtrates, whoſe province it is to declare and adminiſter them, within their ſeveral juriſdictions.

I do not at all mean to enter into juriſprudential diſquiſition, or to carry the reader back to the days of *King Alfred*, who, by the wiſe inſtitution and adjuſtment of provincial diviſions, into tithings, hundreds, &c. laid ſuch a ſcheme of reſponſibility, among the ſubjects of England, for each other, as made it every man's buſineſs and intereſt to prevent diſorders of all kinds.—Theſe wiſe and ſalutary regulations have long ſince been

been obſolete, and, from various cauſes, retain little more than their names.—My intention is to take things as I find them, and to treat the laws of our country as they ſtand at preſent before us. I would be underſtood to confine myſelf to the penal or criminal laws; and, however it may be faſhionable with many, to find great fault with the number and ſeverity of theſe, yet I think it our happineſs, that, as crimes have ariſen, there have been laws made to repreſs them; nor do I conceive, that any man can reaſonably find fault with this, except indeed it be the villain who is the object of them, and who certainly would wiſh to

be free and exempt from all reſtraint whatſoever. — As to the *ſeverity* of our laws, I know of none but of the moſt wholeſome kind; for it is this alone which can deter the ſavage minds of thoſe who are the objects of that *ſeverity*, from the commiſſion of thoſe outrages and miſchiefs againſt which the *ſeverity* of our laws is levelled. The regular, ſober, and virtuous part of the ſociety has nothing to fear from the *ſeverity* of the laws, but they have much to *hope* for; they may hope by this to be protected in their perſons and properties, and in the ſecure poſſeſſion of their lawful rights; for, however the

profligate

profligate and abandoned aſſailant may have caſt off every humane and virtuous inducement to good, and have put on the ſavageneſs, fierceneſs, and cruelty of a wild beaſt, ſo as to have forfeited all right and title even to the character of a man—there will be yet ſome principle of FEAR left, on which the *ſeverity* of our laws is intended to operate, ſo as to check and prevent the miſchiefs he would otherwiſe commit; or, if he proceeds to the full extent of his wickedneſs, to fall upon him, as an example to others, who may yet be ſtopped before it be too late.

It is certainly moſt of all to be

wiſhed, that crimes might be leſſened by *prevention*; and this is never ſo likely to be the caſe, as when the fears of ſevere puniſhment duly operate on the minds of thoſe whom no other conſideration can reſtrain.

Oderunt peccare mali formidine pœnæ,

is an old and true maxim, and is, no doubt, the reaſonable foundation on which the *ſeverity* of our laws is built; and indeed, when this once ceaſes to operate, the ſooner the malefactor is removed out of the ſociety the better; for the wretch who can be hardened againſt the *fear* of what he may himſelf ſuffer, leaves the innocent

part

part of the ſociety but too probable reaſons to *fear*, that they ſhall find no end to their ſufferings from him.

The prevention of crimes, is the great end of all legal ſeverity: nay, the exerting that ſeverity, by making examples of the *guilty*, has no other intention but to deter others, and thus purſue the great end of *prevention*. If this were not the caſe, all puniſhment would be nugatory, and therefore cruel; for the paſt could not be recalled, nor the leaſt advantage accrue to the injured party, however much the criminal might ſuffer.

But if, by *ſeverity* exerciſed on the

the guilty, thoſe who are following the example of their wickedneſs and outrage, are deterred by the example of their ſufferings, the two grand purpoſes of all criminal law are anſwered: the *one*, in the prevention of evil; the *other*, in the ſecurity of the public.

Inſtead of lamenting the multiplicity of our penal laws, we ought rather to lament the occaſions of them; which indeed are ſo frequent, as to make it impoſſible for ſociety to exiſt, unleſs remedies are thought of and preſcribed to ſtop their progreſs. Theſe remedies, like all others, muſt be applicable to the diſeaſes

which

which they are to encounter, and be faithfully and duly adminiſtered, otherwiſe they can be of no effect, and conſequently of no value whatſoever. I may ſay, that the legiſlature has from time to time been aſſiduous in meeting crimes, as they have ariſen, with wholeſome laws; but thoſe, whoſe duty and office it is to adminiſter theſe laws, have now, for many years, been preferring their own *feelings* as *men*, to the duty which they owe the public as *magiſtrates*; and have been making ſo wanton and indiſcriminate an uſe, or rather *abuſe*, of certain diſcretionary powers with which they are inveſted, that ſafety and impunity

invite

invite forth and harden offenders, while danger and diſtreſs are every where menacing the innocent.

Highway-robberies threaten the traveller, whether by night or by day—the lurking footpad lies, like a dangerous adder, in our roads and ſtreets—the horrid burglar, like an evil ſpirit, haunts our dwellings, "*Making night hideous.*"—The farmer loſes his ſheep from the fold, the ox from his ſtall, and all ſorts of people their horſes from their fields, and even from their ſtables. Theſe are but a part of that dreadful catalogue of offences, with which every *Old-Bailey*, and every *Aſſize-Calendar* is filled, and with which

this country is diſgraced and inſulted: and for which it has become a taunt and a proverb in the mouths of foreigners.

Such is our reproachful and alarming ſituation:—the cauſe of this has been already hinted; and, as it is now prevailing more and more, the ſtate of the criminal laws in this land may ſoon be ſaid to reſemble that of the laws of *Vienna*, as repreſented by *Duke Vincentio*, in *Shakeſpeare's Meaſure for Meaſure*.

We have ſtrict ſtatutes, and moſt biting laws,
The needful bits and curbs for headſtrong ſteeds,
Which for theſe MANY *years we have let ſleep,*
Ev'n like an o'ergrown lion in a cave
That goes not out to prey: now, as fond fathers
Having bound up the threatning twigs of birch,

Only

Only to ſtick it in their children's ſight,
For terror, not for uſe; in time the rod
Becomes more mock'd than fear'd: ſo our de-
crees,
Dead to infliction, to themſelves are dead,
And liberty plucks juſtice by the noſe;
The baby beats the nurſe, and quite athwart
Goes all decorum.———

Whoever examines the *common* and *ſtatute* laws, which reſpect the criminal juriſdiction to be exerciſed over offenders of all kinds, muſt ſurely acknowledge the watchfulneſs of the legiſlative powers, both ancient and modern, over the lives, liberties, and properties of the inhabitants of this country: a ſtranger, who ſhould read over an accurate and well-digeſted code of our *crown law*, would

would imagine us to be the happieſt, the ſecureſt, and beſt-protected people under the ſun, in point of our internal police. He would admire the diſpoſition of the *whole*, as well as the adapting of every *part* for the public good.—No dangerous crime without a preſcribed ſeverity of puniſhment—ſo contrived, as that the offender has nothing to *hope*—this inducement ſo precluded, as to leave no encouragement to villainy:—in ſhort, he might be led almoſt to imagine, that the account we have of our ſafety from thieves and robbers, muſt be as perfect as in the days before the *Conqueſt*, when it was ſaid, that

"a child might go from one end
"of the kingdom to the other,
"with a bag of money in his
"hand, without fear of having it
"taken from him."

But when ſuch a reader of our laws is told, that offences againſt thoſe laws are daily committed—that they are multiplied now beyond the example of former ages—that no country is ſo infeſted with the depredations of robbers of all kinds;—he would be at an utter loſs to account for this, till he was told, that the diſpenſers of theſe laws very rarely put them in execution; and therefore, that they were little more than a *ſcare-crow*, ſet in a field to frighten the

the birds from the corn, which at firſt might be terrible in apprehenſion, but in a little time became familiar, and approached without any danger, by even the moſt timorous of the feathered race.

The wiſdom of our conſtitution has placed the executive power in the hands of the *King*; who is the chief magiſtrate in all cauſes, and over all perſons: but, foraſmuch as he cannot himſelf adminiſter this power in his own perſon, he delegates this to others, who, particularly with reſpect to the *criminal* laws, act in his name, and repreſent his perſon: the chief of theſe delegated magiſtrates are

the *Twelve Judges of England*, whoſe high and important office it is to try criminals, to pronounce the ſentence of the law upon them when found guilty, and thus conſign them to that exemplary puniſhment, which the laws allot to their particular offences. Theſe Judges are ſages of the law, choſen from their profeſſional ſituation at the bar, from among the ableſt and moſt learned lawyers;—they are inveſted with great dignity, looked up to (as they ought) with very high reſpect *, and regarded as

* Our *Judges* are not only reſpectable with regard to their *office*, but are ſo *incorrupt*,

as the great oracles of law and juſtice: — they are bound by a moſt ſolemn oath of office, duly to adminiſter juſtice, according to the beſt of their ſkill and abilities, to all their fellow-ſubjects, &c.

Beſides their attendance by turns at the ſeſſion of *oyer and*

corrupt, as magiſtrates, that they *are*, what *Cæſar* ſaid his wife *ought to be*—

Not only chaſte—but unſuſpected.—

As *private citizens*, I think it no diſparagement to the reſt of the kingdom, to ſay, that there are not *twelve* honeſter or worthier men in it. But, as they are ſharers in the common lot of, what Lord *Cheſterfield* ſo pathetically ſtyles, "poor human nature," they are liable to err, even (as *Voltaire* ſays of a certain *Abbé*) "*par l'excès de leurs bonnes intentions.*"

terminer and *gaol-delivery*, at the *Old-Bailey*, for the counties of *London* and *Middleſex*, eight times in a year; they are ſent with a like commiſſion, *twice* every year, into all the counties of *England*, that they may adminiſter juſtice: two Judges are in each commiſſion on the *circuits*, which are divided into *ſix*; and thus theſe magiſtrates ſet forth to carry terror to the guilty, and protection to the innocent, into every part of England.

Their fellow-ſubjects, of courſe, look up to them for ſecurity and protection, and depend on their faithful and ſtrict adminiſtration of the laws, for the puniſhment

of

of wrong and robbery, and for the maintenance and protection of their perſons and properties from violence and depredation—they muſt naturally expect that ſuch *examples* will be made as the law intends; and as naturally hope, that, by means of ſuch *examples*, they ſhall ſit down in peace and ſafety, and have none to make them afraid.

The very appearance of the *Judges* at the aſſizes, if we include the attendance of the high-ſheriff, his under-ſheriff, and other officers—the firſt gentlemen in the county forming that conſtitutional bulwark, the *grand jury*—that other excellent inſtitution,

the *petty jury*, who are to paſs between the crown and the priſoners, on the trials of their ſeveral lives and deaths:—add to this, the vaſt concourſe of people flocking from every part of the county, and aſſembling in multitudes to hear the ſolemn determinations of punitive juſtice—the ſound of the trumpets—the Judge's ſolemn appearance in his robes, when ſeated in the place of judgment:—theſe, and many other circumſtances, form one of the moſt affecting, the moſt aweful ſcenes, that can be exhibited to the eyes of mortals; and, if duly improved, might be ſuppoſed to ſtrike a terror into the minds of the beholders, not eaſily to be forgotten.

I have

I have deſcribed what ought to be, and what the conſtitution intended by the circuits of the Judges—which was no leſs than to carry terror and aſtoniſhment into the minds of all; or, as it is well ſaid,

Ut pœna ad paucos, metus ad omnes perveniat.

And at what a vaſt advantage does the Judge's ſituation place him, over the feelings, affections, and paſſions of his auditory!

Methinks I ſee him, with a countenance of ſolemn ſorrow, adjuſting the cap of judgment on his head—while the crier proclaims—

"O yes!

" O * yes! O yes! O yes!—
" My lords, the king's juſtices,
" ſtrictly charge and command
" all manner of perſons to keep
" ſilence, while ſentence of death
" is paſſing on the priſoners at the
" bar, on pain of impriſonment."

His lordſhip then, deeply affected by the melancholy part of his office, which he is now about to fulfil, embraces this golden opportunity to do moſt exemplary good—He addreſſes, in the moſt pathetic terms, the conſciences of the trembling criminals—he expatiates on the nature of their ſeveral offences—ſhews them how

* A corrupt way of pronouncing the French word, *Oyez—hear.*

juſt

juſt and neceſſary it is, that there ſhould be laws to remove out of ſociety thoſe, who, inſtead of contributing their honeſt induſtry to the public good and welfare, have exerted every art, that the blackeſt villainy can ſuggeſt, to deſtroy both—he enlarges on the fearful ſituation which the honeſt, the induſtrious, the virtuous part of the community muſt be in, if ſuch as then ſtand before him at the bar, are any longer permitted, like ſavage beaſts, to prey upon the public. No perſon, no property can be ſecured, no liberty enjoyed.—He then vindicates the *mercy*, as well as the *ſeverity* of the law, in making ſuch examples,

as

as ſhall not only protect the innocent from outrage and violence, but alſo deter others from bringing themſelves to the ſame fatal and ignominious end which now awaits the priſoners.—He then, in the moſt pathetic terms, exhorts the unhappy convicts, to conſider well how beſt to employ the little ſpace that yet remains between that moment and the grave — he acquaints them with the certainty of ſpeedy death, and conſequently with the neceſſity of ſpeedy repentance—and on this theme he may ſo deliver himſelf, as not only to melt the wretches at the bar into contrition, but the whole auditory into

the deepeſt concern.—Tears expreſs their feelings—and many of the moſt thoughtleſs among them may, for the reſt of their lives, be preſerved from thinking lightly of the firſt ſteps to vice, which they now ſee will lead them to deſtruction. The dreadful ſentence is now pronounced—every heart ſhakes with terror.—The almoſt fainting criminals are taken from the bar—the crowd retires—each to his ſeveral home, and carries the mournful ſtory to his friends and neighbours; — the day of execution arrives — the wretches are led forth to ſuffer, and exhibit a ſpectacle to the beholders, too aweful and ſolemn for

deſcription.

deſcription. They now *ſee*, that certainty of puniſhment muſt await the guilty, and the whole *county feels* a laſting benefit, in the ſecurity and protection which ſuch an example of punitive juſtice has procured them. Theſe impreſſions will laſt their time, and carry their ſalutary effects, perhaps, for years together. Many, many wretches, warned by ſuch examples, turn from the evil of their ways, ceaſe to do evil, learn to do well. Thus the law has its effect—thus are the perſons, properties, and lives of men moſt mercifully preſerved, the public peace ſecured, and the moſt valuable ends of civil government fully anſwered.

The

The MAGISTRATE who thus diſpenſes juſtice, is a bleſſing to the community—a protector of the innocent, a terror to the guilty. —He is not only a repreſentative of an earthly KING, but of the KING of KINGS—for he is a *miniſter* of GOD *for good.—He bears not the ſword in vain.* And when he is called to give an account of his *miniſtry*, with what an unſpeakable comfort will he be able to reflect, that, through the faithful, upright, impartial, ſteady, and uniform diſcharge of his high office, he has contributed to the peace, welfare, and good order of ſociety, as far as the powers with which the conſtitution inveſted

him could enable him ſo to do; and that he has left an example to thoſe who ſhall ſucceed him, that they may tread in his ſteps, and thus continue the exerciſe of juſtice and truth from generation to generation!

Is this the caſe in our day? are all our diſpenſers of the laws ſuch as I have been deſcribing?—The natural connection between *cauſe* and *effect*, muſt (alas!) lead us to anſwer in the *negative*.

Holy writ tells us, that, when *Saul* the king of *Iſrael* had received a poſitive commiſſion from God to deſtroy the *Amalekites* utterly, and all that belonged to them, he executed his commiſſion with

with ſuch partiality, as to ſave the *Amalekite* king *Agag* alive; and the beſt of the ſheep, oxen, and fatlings, and all that was good, and would not utterly deſtroy them; but every thing that was vile and refuſe, that he deſtroyed utterly. When *Samuel* afterwards met *Saul*, *Saul* expreſſed himſelf thus:—"Bleſſed be thou of the "Lord, I have performed the "commandment of the Lord." And *Samuel* ſaid, "What mean-"eth then this bleating of the "ſheep in mine ears, and the low-"ing of the oxen which I hear?"

Now, if our *Judges* of *aſſize* really execute their commiſſions as they ought, what meaneth then

theſe numbers of burglaries, high-way robberies, theſe depredations, by day and night, in our roads, ſtreets, houſes, fields?—How are our news-papers filled with daily accounts of miſchiefs done on the perſons and properties of his majeſty's ſubjects, by *felons* of every denomination?

One reaſon, and only *one*, can be given for theſe things. The law is not in fault, it is wiſely contrived to prevent them, by holding forth *certain* puniſhment; but that puniſhment has been rendered ſo *uncertain*, or rather the ſuſpenſion of it ſo *certain*, as to prevent the operation of the laws.

I remember to have ſeen a fellow

low at Briſtol, who was by trade a *viper-catcher*. He produced, and opened, a large box, with about one hundred vipers in it, into which he put his hand, and took them up, at leaſt, half a dozen in a bunch. I trembled at the ſight, expecting, every inſtant, to ſee the man bitten: but my fears were ſoon removed, by being told, that all their fangs were cut out—ſo that, if I had pleaſed, I could myſelf have handled theſe horrid creatures with all ſafety.

Methinks, that our criminal laws are reduced to the ſtate of the aforeſaid *vipers*—their ſting is gone, their fangs are out, their

terror is loſt; and our *viper-catchers* ſeem to have ſo contrived the matter, as that the laws ſhall hurt nobody, who chuſes to ſport with them.

Since I began theſe ſheets, I have had ſome converſation with an eminent barriſter, upon theſe ſubjects; and he furniſhed me with an anecdote, which abundantly illuſtrates what has been ſaid.

Some years ago, when he went the *Norfolk* circuit, he accidentally had occaſion to ſee a fellow who had been capitally convicted, and, having received ſentence of death, was remanded to priſon. It ſeems he had been an old offen-

der, and before had had ſome hair-breadth 'ſcapes for his life. My friend expoſtulated with him, and aſked him how he could venture again on his old practices, after ſo many eſcapes? "Ah, Sir," ſaid the fellow, "that's the very "thing — there are ſo many "chances *for* us, and ſo few *a-* "*gainſt* us, that I never thought "of coming to this.—Firſt," ſaid he, "there are many chances a- "gainſt being diſcovered — ſo "many more that we are not "taken—and if taken, not con- "victed—and if convicted, not "hanged—that I thought myſelf "very ſafe, with at leaſt twenty "to one in my favour."

The argument which this *villain* uſed, is, no doubt, in the thoughts of all the rogues in the kingdom, who find equal encouragement to perſiſt in their evil courſes, with this fellow; for the news-papers aſſure them, on relating the conviction and condemnation of the criminals at the ſeveral aſſize-towns, that, "they were *all reprieved* before "their lordſhips left the town." I will not ſay *always*, but this is moſt *uſually* the caſe.

Nay, I once heard a *Judge*, in his charge to the grand-jury, ſay to this effect, that, "Where men "robbed on the highway, and did "not uſe much violence, or do

"any miſchief to the perſons they "robbed, he thought them pro- "per to be recommended as ob- "jects of mercy."—This was no doubt carried to the gaol, and received with high applauſe: and at that very aſſizes, five or ſix highwaymen were convicted on the cleareſt evidence:—but— "they were all reprieved before "the Judge left the town."

As for ſtealing *ſheep* and *horſes*, which the wiſdom of the legiſlature has made felony without benefit of clergy, theſe are almoſt ſure * of a *reprieve*; and this is now

* This is ſo much the caſe, that the chances are at leaſt *forty* to *one* in favour

now ſo much the faſhion, as to have become very near a *certainty*, and

of the thief.—The diſcovery is now rendered more difficult than ever, and of courſe the theft itſelf more ſafe and eaſy —for, of late years, there have been ſet up *horſe-ſlaughter-houſes*, of which there are ſeveral in and about *London*. Hither the ſtolen horſes are frequently brought, and ſlaughtered, after which they cannot well be traced. The profits ariſing from the *ſkin*, the *fat*, and the *fleſh*, which amount uſually to about *thirty ſhillings* (as I am informed) are the temptations to this ſpecies of horſe-ſtealing, eſpecially in the counties bordering on the *metropolis*: ſo that a horſe, worth twenty, thirty, fifty, or even an hundred pounds, which a gentleman, or other perſon, may turn into his field over-night, in confidence that the law will protect him, may be ſtolen, and carried to the ſlaughter-

houſe

and does almoſt amount to a *ſuſpenſion* of the *penal laws* which relate to theſe offences.

In

houſe before morning, and never ſeen or heard of more. This is a matter very difficult to be proved, yet ſome few have been convicted. The firſt I ever heard of, was at the *Old-Bailey*, about five years ago.—A villain had ſtolen a gentleman's favourite riding-horſe, very fat and in fine order, out of a field ſomewhere near *Lee Bridge*. This fine animal was carried to one of theſe infamous horſe-ſlaughter-houſes and killed; but it ſo happened, that he was traced, and though not time enough to ſave his life, yet time enough to find his ſkin, which was ſworn to, and the man convicted; but, to the aſtoniſhment of all that heard it, this barbarous and injurious villain was — reprieved!

Since

In ſhort, the *beſt* way, that is, the moſt *profitable* way, as things now

Since that, *two* or *three* have been executed in ſome of the home counties.—All this exceſs of barbarity and wickedneſs, has come by degrees, owing to the lenity exerciſed towards horſe-ſtealers. The law ſays they *ſhall be hanged*; thoſe who are to put this law in execution, ſay—they ſhall *not*. In ſhort, the *ſic volo* of the legiſlature, is abſolutely controuled by the *ſic nolo* of a Judge. This has paſſed for ſome years pretty uniformly upon the public; but it is illegal, arbitrary, and unconſtitutional; tending to overturn the true diſtinction between the *legiſlative* and *executive* powers, to the encouragement of all manner of diſorder and villainy, and to the deſtruction of peace, good order, and property among the ſubjects of the kingdom.

now ſtand, to deal in *horſes* and *ſheep*, is to *ſteal* them; for then there is no *prime coſt* upon them, except to the unhappy people from whom they are ſtolen.

However, theſe offences have been looked upon in ſo ſerious a light by the legiſlature, ſo detrimental to ſociety, and ſo injurious to individuals, that it has been

kingdom. That a *Judge* has a power to *reprieve*, for juſt and reaſonable cauſe, is *true*—but that he has a right to abuſe that power, to the ſuſpenſion of the *penal laws*, is *not true*.—He is doubtleſs as anſwerable for mal-adminiſtration of his office in this reſpect, as in any other.

Qu. If theſe *horſe-ſlaughter-houſes* are not objects of ſerious enquiry by the *legiſlature?*

been found neceſſary to endeavour to put a ſtop to them, by ouſting the offenders of their clergy: and there can hardly be a doubt, but, if the intention of the laws had been duly obſerved, by thoſe whoſe province it is to diſpenſe them, the farmers, whoſe property mainly conſiſts in their live ſtock, might have had them as ſafely ſecured in their fields and paſtures, as if they were ever ſo carefully locked up at home. And it is a very melancholy conſideration that it is not ſo; and a very great ſcandal and reproach to a country, which pretends to civilization, that we are not more ſecure in our property of every kind,

than

than if we were ſavages. Perhaps we are, upon the whole, *leſs* ſo; for I much queſtion whether there is to be found a people upon earth, who ſuffer in the invaſion of their properties as we do.

Some have ſaid, that a ſcruple of conſcience in *Judges*, prevents the execution of the laws againſt certain offences—that they think them too ſevere for the offence, and therefore conſtantly *reprieve* thoſe who are convicted. But I do not apprehend that this is at all the province of a *Judge*—whatever laws the parliament ſees neceſſary to enact, the *Judge*, agreeably to his *oath* of *office*, is bound to declare and pronounce; and

his

his ſtanding between the judgment and execution, is taking upon himſelf, not only to be wiſer than the law, but a power, which, if wantonly and cauſeleſsly exerted, muſt render the moſt important and ſalutary laws contemptible and uſeleſs.—The *Judge*, in ſuch a caſe as this, ſets himſelf above the law, and preſumes to exerciſe an authority with which the conſtitution has not intruſted even the crown itſelf. We all know how a *diſpenſing power* over the penal laws was attempted in the days of kings who aimed at arbitrary power, by ſetting themſelves above the laws, and wanting to govern without them; and we alſo

alſo know what this ended in. But where is the difference, between the arbitrary prevention of trial, and the arbitrary prevention of execution?—the *former*, perhaps, may be more glaringly arbitrary, but the *latter* will anſwer the ſame end.

That the *king* has an inherent power to pardon all offences againſt his crown and dignity, is moſt certain: and very dreadful would it be, if he had not ſuch a power; for otherwiſe we ſhould, in very many caſes, which might be mentioned, be liable to ſuffer, however innocent, if once convicted, through the malice or wickedneſs of our fellow-ſubjects.

But

But will any body contend, that the conſtitution, by intruſting the crown with the power of pardon for the moſt ſalutary purpoſes, could ever mean to ſet it above the law, ſo as that the execution of it ſhould wholly depend on a wanton and arbitrary exerciſe of this prerogative, to the utter ſuſpenſion and ſubverſion of all law whatſoever?

So the Judges have a power to *reprieve*: and thankful may we be that it is ſo; for, by this, they are enabled to ſave lives which ought not to be taken away. For inſtance—a Judge perceives prejudice and malice in the *jury*, a fixed determination, right or wrong,

wrong,' to convict the priſoner; the evidence by no means proves the caſe; the *Judge*, accordingly, in his direction to the *jury*, takes due notice of this, and leaves the matter to the *jury* in favour of the priſoner; notwithſtanding which, they find the priſoner *guilty* — here it becomes the *Judge*'s duty to reprieve, and recommend the convict to the royal mercy, of which ſuch a convict is undoubtedly an object. So, where there is a contradiction and contrariety of evidence, and, though the *jury* convict, the Judge is by no means ſatisfied in his own mind of the guilt of the priſoner.—Likewiſe, in caſes where there is a doubt of

the law—or where life may depend on vague and uncertain words in an act of parliament, of very doubtful conſtruction—or where facts appear after the condemnation, which inconteſtibly prove the innocence of the convict. In theſe, and in ſome few other inſtances which might be named, the *Judge* is not only juſtified in *reprieving*, but would not execute *judgment in mercy* if he did not.

But to exerciſe this power of *reprieve* wantonly, and indiſcriminately, ſo as to *ſave felons* only becauſe they are *condemned*; to defeat the end of the law by a mere arbitrary diſpenſation of a

Judge,

Judge, who, to gratify his *feelings* as a *man*, violates his *oath* and *duty* as a *magiſtrate*, is to abuſe a moſt ſalutary power to the moſt miſchievous purpoſes. It makes void the law;—its terror, and therefore its beſt uſe, is no more—the *innocent public ſuffers, the guil-

* *Tully* defines *pity*, as—"Ægritudo "ex miſeriâ alterius injuriâ laborantis"—"an anxiety, care, or ſorrow (of mind) "excited by the miſery of another, labour-"ing under injury." If this definition be juſt, one ſhould think, that the *injured* public, rather than the *injurious* robber, ſhould be the object of the magiſtrate's compaſſion.

It was a fine ſaying of the great and good *lord chief Juſtice Hale*—"When I "find myſelf ſwayed to *mercy*, let me re-"member, that there is a *mercy* likewiſe "due to the country."

ty invader of its property triumphs.

A ſoldier, in one of the laſt encampments, took to marauding, and ſtole whatever he pleaſed from the poor cottagers, whoſe misfortune it was to dwell in the neighbourhood of the camp. He particularly fixed on a little garden belonging to two old people, a man and his wife, and uſed to come in open day, in the ſight of the owners, and take their cabbages, and other ſuch-like things, for his own purpoſes; the poor old woman had often remonſtrated with him on theſe occaſions, but only got oaths and curſes, and threats for her pains. One night

(in

(in the middle of the night it was) this villain forced open the door; theſe poor people were in bed; and he dragged the woman out of bed, to her infinite terror and aſtoniſhment, made her tell where their money was, and robbed them of their little *all*, which amounted to *five ſhillings*. Theſe circumſtances appeared to demonſtration on the trial, and the fellow was convicted of this atrocious and ſhocking fact. He received ſentence of death. He was * *reprieved* before the Judge left the town!

At

* If this affair had happened in a rich and opulent family, and the lady of the houſe had been dragged out of bed at

 midnight,

At an aſſizes after this, an highwayman was convicted, on the cleareſt evidence, of a moſt audacious robbery in the *day-time*. Three ladies were together in a chariot, two of them very young. The robber overtook the chariot, and, with the moſt horrid oaths and imprecations, ſwore he would blow out the coachman's brains

midnight, and the houſe robbed—what *Judge* would have *dared* to reprieve the offender? yet, if it had been done in *that caſe*, it would not have been ſo injurious as in *this*, becauſe the rich can afford, in a great meaſure, to defend their houſes, by dogs, ſervants, arms, &c. whereas the poor have no defence, but the law. If this be withheld, they are totally defenceleſs.

if he did not ſtop. On the chariot being ſtopped, the villain held a *cocked piſtol* to the breaſt of one of the young ladies, for about *a minute and an half* (this the coachman ſwore poſitively) and, in this ſituation, he plundered the ladies of ſome money. During this tranſaction, we may well ſuppoſe the terror of the young lady to be very great, and to be not a little heightened by the fellow's threatening to ſhoot a poor woman, who ſtopped by the ſide of the carriage, if ſhe did not walk on.

The perpetrator of the above audacious fact, was an OLD OFFENDER, who had TWICE before

been indicted, tried, and convicted of highway robbery—once at an aſſizes for the ſame county, in the year 1777, for robbing a gentleman on the highway, of twenty-two pounds twelve ſhillings.—Judgment was reſpited at that aſſizes, becauſe he was ſick, and could not be brought up to receive ſentence; but he afterwards received his majeſty's moſt gracious and free pardon.

Afterwards, at the *Old-Bailey*, in *September* ſeſſion 1782, he was, together with a comrade of his, convicted again of a robbery on the highway, and again received ſentence of death — he was reſpited—and, in *December* ſeſſions

following, received his majeſty's mercy, on condition of tranſportation to *Africa*, during his natural life.—Afterwards, *viz.* on *September* 17th, 1783, he *again* received his majeſty's free pardon, and was diſcharged. — Some months after this, *viz.* in *May* 1784, this incorrigible villain committed the robbery on the highway, mentioned above, on the *three ladies*, of which he was, after an impudent *alibi* defence, convicted on the cleareſt evidence — received ſentence of death—and was *reprieved* before the *Judge* left the town * ! !

I heard

* The *good* effects of this kind of lenity, were felt, in the county where this happened,

I heard the hiſtory * of this fellow, at the aſſizes where he was laſt tried: it was publicly talked of; and if the *Judge* did not

happened, very early after the ſaid aſſizes. —Three poſt-chaiſes were robbed at noon-day, in their way to London; and, ſome time after, a lady in her carriage was robbed at eleven o'clock in the morning. Another was robbed in the day-time, within a few yards of her own door. Afterwards, three ladies in a poſt-chaiſe were robbed at one o'clock at noon (November the 6th, 1784) by two highwaymen, whom I ſaw purſued, and heard they were taken, a few miles off, by the purſuers.

* That was, in general, that he had been *twice* before convicted, and pardoned —but I have extracted the particulars above-mentioned from authentic certificates.

hear

hear it, it could only be, becauſe *reprieves* are too much of courſe, to be ſuppoſed to need any enquiry into the characters and circumſtances of thoſe on whom they are beſtowed.

This offender, like numbers of others, having done ſo much to be *hanged*, is not to take any *blame* to himſelf that he has not *ſucceeded*: he muſt at preſent conſole himſelf and friends, like the heroic *Portius*—

"'Tis not in mortals to command ſucceſs,
"We will *do more*, SEMPRONIUS, we'll *deſerve* it."

The above two caſes ſtand as proofs of that wanton and dangerous

rous abuſe of power, which, if not checked, muſt overturn the whole ſyſtem of our criminal laws, and leave the public to be plundered at the will of individuals.

In *France*, capital offences ſeldom, if ever, meet with a relaxation of the laws—robberies and burglaries eſpecially—and therefore they are very ſeldom * heard of.

* In the days of *Queen Anne*, during the war in *Flanders*, when the *Duke* of *Marlborough* and *Prince Eugene* commanded the allied army; a ſoldier, under the immediate department of *Prince Eugene*, was condemned to be hanged for marauding. The man happened to be a favourite with his officers, who took great pains to ſave his life; and for this purpoſe

of. I believe, in no country but this, are *felons* ſafe from the law; and

poſe interceded with the *Prince*, who refuſed abſolutely to grant their requeſt. They then applied to the *Duke* of *Marlborough*, begging his Grace to interfere: he accordingly went to *Prince Eugene*; who ſaid, he "never did, and never "would, conſent to the pardon of a ma-"rauder." — "Why," ſaid the *Duke*, "at this rate, we ſhall hang half the "army. — I pardon a great many." — "That is the reaſon," replied the *Prince*, "that ſo much miſchief is done by your "people, and that ſo many ſuffer for it. "—I never pardon any, and therefore "there are very few to be puniſhed in my "department." — The *Duke* ſtill urged his requeſt; on which the *Prince* ſaid— "Let the matter be enquired into, and if "your Grace has not executed more than

"I have

and therefore there are ten times the number of felons among us, than

" I have done, I will conſent to the par-
" don of this fellow."—The proper enquiries were accordingly made, and the numbers turned out very highly in favour of *Prince Eugene*; on which he ſaid to the *Duke*—" There, my Lord, you ſee the be-
" nefit of example.—You pardon *many*,
" therefore you are forced to execute
" *many*; I never pardon *one*, therefore
" *few* dare to offend, and, of courſe, but
" *few* ſuffer."

The reaſoning, which may be drawn from the above, on the ſide of ſtrict diſcipline, is not only applicable to *fleets* and *armies*, but to all government whatſoever: the civil intereſts of ſociety can no otherwiſe be protected, than by a *due* and *certain* execution of the laws. The *Marquis* of *Beccaria* obſerves very truly, that—

" a *leſs*

than in any other country. No other reaſon can be conceived for this, but the total relaxation of diſcipline, the little conſideration that is paid to the peace and quiet of the public, and the almoſt *certainty* of eſcape from *death*,

" a *leſs* puniſhment, which is *certain*, will " do more good than a *greater*, which is " *uncertain*."

The above anecdote may alſo ſerve as an illuſtration of thoſe ſeeming paradoxes—

Crudelitas parcens, Lenitas puniens:

and is exceedingly applicable to our proceedings, with reſpect to punitive juſtice, as adminiſtered in this kingdom; where ſo many wretches ſuffer, for crimes, which they have been tempted to commit thro' hope of *impunity*.

with

with which the minds of robbers are impreſſed. Certainty of puniſhment carries a terror to the heart, which is not eaſily overcome; but when that *certainty* decreaſes, the terror will decreaſe in the ſame proportion.

Dr. Johnſon, in his *Journey* to the *Weſtern Iſles of Scotland*, tells us—that "the mountaineers are "thieviſh, becauſe they are poor, "and, having neither manufac-"tures nor commerce, can only "grow richer by robbery. They "regularly plunder their neigh-"bours, for their neighbours are "commonly their enemies; and, "having loſt that reverence for "property, by which the order of

"civil

" civil life is preſerved, ſoon
" conſider all as enemies whom
" they do not reckon their friends;
" and think themſelves licenſed
" to invade whatever they are not
" obliged to protect."

This ingenious author then preſents us with a very different ſcene, which may ſerve to illuſtrate and enforce what has been ſaid before in theſe papers.——

" By a *ſtrict adminiſtration of*
" *the laws*, ſince the laws have
" been introduced into the high-
" lands, this diſpoſition to thievery
" is very much repreſſed. Thirty
" years ago, no herd had ever
" been conducted through the
" mountains, without paying tri-

" bute in the night to ſome of " the clans; but cattle are now " driven, and paſſengers travel " without danger, fear, or moleſ- " tation." Page 98.

Again, page 214.

" I doubt not, but that, ſince the " regular Judges have made their " circuits thro' the whole country, " right has been every where more " wiſely and more equally diſtri- " buted."

" The roads are ſecure in thoſe " places, thro' which, forty years " ago, no traveller could paſs " without a convoy." Page 215.

Such are the happy conſequences of " a ſtrict adminiſtration of " the laws," in an almoſt ſavage country:

country: whereas, by an undue relaxation in the adminiſtration of the laws, we are, in this civilized part of the iſland, almoſt in as bad a condition, as the highlands of *Scotland* were, before they had either Judges or laws among them.

The public have an undoubted right to look up to the Judges of the land for protection and ſafety; and thoſe laws, which are the birthright of every ſubject, from the higheſt to the loweſt, ought to be employed in the defence of their perſons and properties from violence and outrage of every kind: if this be not the caſe, every man muſt ſtand

in dread of perpetual injury; and has a right to complain, in the loudeſt and ſtrongeſt terms, of thoſe, who, inſtead of preventing theſe diſorders, are little better than acceſſaries* before the fact to the daily commiſſion of them.

* This ſentiment is finely touched by our inimitable *Shakeſpeare*—Meaſure for Meaſure, Act I. Scene 4.

FRI. *It reſted in your Grace*
To unlooſe this ty'd-up juſtice, when you pleas'd:
And it in you more dreadful would have ſeem'd,
Than in Lord Angelo.

DUKE. *I do fear, too dreadful:*
Sith 'twas my fault to give the people ſcope,
'Twould be my tyranny to ſtrike, and gall them,
For what I bid them do: *for we* bid this be done,
When evil deeds have their permiſſive paſs,
And not the puniſhment.

This

This

—— Sævior enſe
Parcendi rabies,

ſo far from deſerving the ſacred name of *mercy*, is in fact the higheſt *cruelty*.

In the firſt place, it encourages the daring and profligate to prey on their fellow ſubjects, inſomuch, that no man is ſafe but the robber himſelf.

Secondly. It draws forth many, by the hopes of impunity, to commit actions, which in the end bring them to an ignominious death—in all ſuch inſtances, it is no better than *murder*.

Thirdly. It ſo deſtroys the force of the examples that are made, as

to take away their *terror*, conſequently their *uſe*; and this is no better than throwing away the lives of thoſe who are executed—and if ſo, little better than *murder*.

Fourthly. Though the number of the executed are *comparatively few*, with reſpect to the numbers that are *condemned*, yet they are *poſitively many*; ſo *many*, as to ſhock the humanity of every man that has not loſt all feeling—and this is the conſequence of a precarious and uncertain adminiſtration of juſtice; for, were juſtice invariably and ſteadily adminiſtered, according to the laws, and to the duty of thoſe who are

to diſpenſe them — as offences would be *few*, ſo would executions be *few* alſo.

Fifthly. What a diſcouragement doth this ſame *parcendi rabies* give to the zeal and care of the inferior magiſtrate! when, after much trouble, and ſome expence, in many caſes, he is to commit an offender for trial, no other end is anſwered, than exhibiting a mere farce at the next aſſizes, where the purpoſes of juſtice are to be defeated, and conſequently to be laughed at by every thief in the common gaol.

Sixthly. This throws alſo a great damp on proſecutions; for

to what purpoſe * is it that a man ſhall travel many miles, perhaps almoſt three parts over a large county, with a number of witneſſes, when, after all, it is ten to one that the example, which he ſeeks to be made for the ſake of the public, is turned into an encouragement to other thieves, to rob him as he returns home.

Seventhly. As it is the glory of a ſociety, that peace and good order are maintained within it, ſo

* *Quid triſtes quærimoniæ,*
Si non ſupplicio culpa reciditur?

HOR.

But wherefore do we thus complain,
If juſtice wear her awful ſword in vain?

FRANCIS.

is it the reproach and diſgrace of any people, that all manner of violence and rapine are encouraged, by a partial, uncertain, and inadequate execution of the laws.

Eighthly. How ſhocking is it to conſider, that in a trading country like this, where perſons are obliged to travel at all hours, that no man can ſtir out a mile from his houſe, without an apprehenſion of being robbed, and perhaps murdered! for of late, we have had inſtances of the moſt ſavage barbarity exerciſed on the perſons of his majeſty's ſubjects, whoſe fate it has been to be met by robbers.

For the above, and for many other

other reaſons which might be adduced, I cannot help ſubſcribing to that ſaying of Machiavel, that —"Examples of juſtice are more "*merciful*, than the unbounded "exerciſe of pity."

But perhaps it will be ſaid, that, though ſo few capital convicts are puniſhed with *death*, according to law, yet they are puniſhed either by tranſportation, or by being ſent, for a term of years, to work on the Thames, in raiſing ballaſt. —Still neither of theſe exhibit the example which the laws ordain and require to be made: and ſad experience has long taught us, that the latter of theſe puniſhments has been attended with an increaſe of

all

all kinds of villainy.—How ſhould it be otherwiſe? for how is it poſſible to conceive a more dreadful and dangerous ſchool of iniquity, than a place, where villains from every part of the kingdom are brought into an intimate acquaintance?—where they are connected in wickedneſs as in ſuffering—and where even the young beginner, who, when he firſt arrives, not having loſt all ſhame, might otherwiſe reform, is ſure to be hardened by the companions with whom he aſſociates, and to have every principle of humanity deſtroyed from within him.—He then comes forth, replete with miſchief—and ten-fold more a

villain than when he was ſaved from the gallows, to the no ſmall detriment of the innocent public.

As for *tranſportation*, there might be ſome hope ariſe from it, if, as in former times, the laws were executed on thoſe who return from it; but it has lately been the faſhion to pardon this crime alſo, ſo that the public is almoſt left without any reſource at all.

I myſelf have ſeen, and very lately, at a country aſſizes, two fellows, who ought to have been hanged the aſſizes but one before, (the one for an *highway robbery*, the other for a *burglary*) but reprieved; and having received his majeſty's mercy, on condition of

tranſportation

tranſportation—tried for *breaking priſon*, and for *being at large*, &c. They were both convicted, and condemned for this laſt offence —and both again *reprieved*— to the no ſmall edification, comfort, and encouragement of the profligate and miſchievous of all denominations.

Throughout theſe papers, I have, as much as poſſible, avoided naming perſons, times, or places.—I have done this, becauſe I mean not to be thought invidious with reſpect to individuals, but only to offer my ſentiments, on ſubjects which I cannot but deem of the moſt ſerious conſequence to ſociety.

As

As for the ſubordinate means of preventing robberies—ſuch as encouraging induſtry, leſſening the numbers of ale-houſes, public places of diverſion, &c. — theſe things, as well as every other that can be ſaid on the ſubject, are ſo obvious, as almoſt naturally to ſuggeſt themſelves to every perſon's mind that thinks at all. However, theſe points are well diſcuſſed in a pamphlet publiſhed by the late ingenious *Henry Fielding*, Eſquire, printed for *A. Millar*, in the year 1751; intitled, "*An Enquiry into the Cauſes of the late Increaſe of Robbers*," &c.— a book containing many learned and wiſe obſervations, and which

I could

I could wiſh to be red over carefully, by every order of magiſtrates within the kingdom.

But it is to be feared, that our diſorder is got to ſuch an height, that no palliatives will now avail; there muſt be an end of the *police* itſelf, unleſs the laws give it their ſupport; and this can only be done, by a ſtrict and faithful diſcharge of duty, in thoſe who are called into the high offices of magiſtracy. Then will the laws be feared, the diſpenſers of them reſpected, our lives and properties be ſecured, and the honour of this kingdom vindicated from the aſperſions of our neighbours on the continent, who look upon us as little better than a nation of *banditti*.

A *Judge*

A *Judge* who can ſee a fellow-creature ſtand before him, under circumſtances of the deepeſt guilt, and expoſed to the ſevereſt puniſhment, without feeling the utmoſt pity and compaſſion, muſt be a monſter in nature; little better muſt he be, who does not gladly embrace every opportunity of ſhewing *mercy*, where it can be done conſiſtently with the ſafety and welfare of the public:—but, on the other hand, *theſe* ought to be uppermoſt in the *Judge*'s thoughts; for where *theſe* are ſacrificed in any degree, it is not *mercy*, but *folly* and *injuſtice*, to *reprieve*; and ſuch *reprieves* having, no doubt, brought more to

the

the gallows than they have ever ſaved from it, are not to be eſteemed acts of *mercy*, but are a ſpecies of *cruelty*. The drawing in men to commit capital offences, under a notion of *impunity*, is very miſchievous, not only to the criminals themſelves, but to thoſe who ſuffer by their outrages. I cannot help thinking, that, *in foro conſcientiæ*, a *Judge*, who wantonly and cauſeleſsly releaſes a thief from the puniſhment of the law, is anſwerable †, not only for all the miſchief

† The famous *Killigrew* is ſaid to have come to court one morning, and on *King Charles the Second*'s aſking him—"What "news?"—"Very bad," ſaid *Killigrew*

miſchief ſuch a villain does afterwards, but alſo for all that may be done by others, who take advantage to offend from the example of ſuch ill-grounded clemency.

There is alſo a great defect in the manner of paſſing *ſentence of*

" —there is a report, about town, that " your *majeſty* robbed and murdered a " man laſt night in the ſtreet."—" What " mean you?" ſaid the *King*.—" I mean," replied the other, " that the man whom " your majeſty would pardon, againſt the " advice of your beſt friends, hath com- " mitted the facts which I mentioned, and " all the world lays this buſineſs on your " majeſty." —" Ods-fiſh," quoth the King, " I am ſorry for it—but I will do " ſo no more."

death

death on criminals. It is for the good of the public that this ſhould be done with the utmoſt ſolemnity, not only to impreſs the convicts with a due ſenſe of their crimes, but alſo to convince them of the juſtice and rectitude of their ſentence. Add to this, the infinite ſervice it muſt be of, to impreſs alſo the minds of the ſtanders-by with theſe things. But, inſtead of deferring the ſentence till the end of the aſſizes, when the trials are over; inſtead of calling to the bar all the criminals at once, and addreſſing them in the moſt pathetic manner upon their ſeveral ſituations, that all who hear may be apprized of what the law

is, and what are the conſequences of offending againſt it—it is now too often the faſhion to paſs ſentence on every criminal as he is convicted: and this with very little preface: ſo that by the deſultory manner in which it is done, and the frequent repetition of it, it becomes ſo familiar to the hearers, as to loſe almoſt all its effect, and one grand end of the Judge's office is ſadly defeated.

Forms, conſidered abſtractedly, or merely in themſelves, are trifling matters—but when *relatively* conſidered, as adding ſolemnity and dignity to the *Judge*'s office, are of very great and ſerious importance; and, perhaps, a *Judge* owes

owes more of that veneration and reſpect, which is paid him by the multitude, to the forms obſerved on his approach, and at his appearance, than to any of his perſonal qualifications, however eminent theſe may be.—The dignity of a magiſtrate very mainly conſiſts in the *forms* which ſurround him; therefore to depart from any of theſe, is to leſſen his own importance, as well as that of his office. This has been too much done by ſome, and I wiſh it may not be followed by others. A contempt of magiſtracy muſt be ſucceeded by a contempt of the laws themſelves; therefore every man who wiſhes well to the laws,

ſhould be careful to maintain that conſequence and dignity, with which the office he bears has wiſely inveſted him, and without which, firſt his *perſon*, then his *authority* will be deſpiſed.

What has been ſaid in the foregoing pages, is more immediately applicable to *Judges* on the circuits. They are the magiſtrates who are appointed to carry juſtice into every remote part of England; and on their due execution of their high and important office, the whole country muſt look for peace and ſafety: theſe are what every man has a right to enjoy, as far as the laws can enſure them to him; therefore, to rob

thoſe laws of their effect, by a careleſs, partial, or inadequate adminiſtration of them, is a breach of truſt of the moſt dangerous and miſchievous kind: notwithſtanding this, ſuch an adminiſtration of the laws has been long creeping in upon us, as the length of the gaol-calendars, more eſpecially in the home counties, too plainly teſtify.—I know that many other cauſes are invented for this, ſome even lay it upon the laws themſelves—but no man has a right to do this, till thoſe laws have been ſteadily, faithfully, impartially, and uniformly executed in every part of the kingdom. 'Tis this, and this alone, that can deliver

us from the dreadful ſituation to which we are now brought, unexampled in former times—*bad* tho' *they* might be, ſtill *theſe* are *worſe*. —The reaſon of this is, that there is almoſt an univerſal want of diſcipline, a general failure of attention, in our ſuperior magiſtrates, to the vaſt importance of punitive juſtice: this induces the wicked and profligate to become ſtill more ſo; having ſo many chances in their favour, they very little concern themſelves about *conſequences*—or, as a wiſe king ſaid —"Becauſe ſentence againſt an "evil work is not executed ſpeedi-"ly—(and we may alſo ſay—*cer-*"*tainly*) therefore the heart of "the

"the ſons of men is fully ſet in "them to do evil."

As to tne METROPOLIS, we may ſay of every part of it, as *Juvenal* ſays of *Rome*, in its worſt eſtate—

——— Qui ſpoliet te
Non deerit, clauſis domibus poſtquam omnis ubique
Fixa catenatæ ſiluit compago tabernæ.
Interdum et ferro ſubitus graſſator agit rem,
Armato quoties tutæ cuſtode tenentur
Et Pomptina palus, & Gallinaria pinus.
Sic inde huc omnes tanquam ad vivaria currunt.
Qua fornace gravet, qua non incude catenæ?
Maximus in vinclis ferri modus, ut timeas, ne
Vomer deficiat, ne marræ & ſarcula deſint.
Felices proavorum atavos, felicia dicas
Secula, quæ quondam, ſub regibus atque tribunis,
Vidêrunt uno contentam carcere Romam.

SAT. iii. l. 302—314.

Thus

Thus excellently imitated by Dr. *Johnſon*——

In vain, theſe dangers paſt, your doors you cloſe,
And hope the balmy bleſſings of repoſe:
Cruel with guilt, and daring with deſpair,
The midnight murd'rer burſts the faithleſs bar;
Invades the ſacred hour of ſilent reſt,
And plants, unſeen, a dagger in your breaſt.
Scarce can our fields, ſuch crowds at Tyburn die,
With hemp the gallows and the fleet ſupply.
Propoſe your ſchemes, ye ſenatorian band,
Whoſe ways and means ſupport the ſinking land;
Leſt ropes be wanting, in the tempting ſpring,
To rig another convoy for the king.
A ſingle jail, in *Alfred*'s golden reign,
Could half the nation's criminals contain:

Fair

Fair Juſtice then, without conſtraint ador'd,
Held high the ſteady ſcale, but deep'd the ſword;
No ſpies were paid, no ſpecial juries known,
Bleſt age! but ah! how different from our own!

The cauſe of all this is one and the ſame, both in town and country, *viz.* the *uncertainty* of puniſhment, and the almoſt *certainty* of *reprieve*. That there are ſo *many* executed in *London*, is very ſhocking to be conſidered; but it is more ſhocking ſtill to conceive, that, perhaps, not even a *few* of thoſe *many* would ever have ſuffered, if the multitude of *reprieves* that are granted to far the greater

majority

majority of convicts, did not take off the force of the ſad examples which are made, ſo as to leave the chance of life at leaſt *three* to *one* in favour of the guilty. How injurious is this to thoſe who are executed! How monſtrous is it to take men's lives away under pretence of example, and yet do this with ſuch a partiality, as to deſtroy the very end of their ſufferings, by ſo far weakening the force of that example, as to render it void and of none effect!

I remember, and not very long ago, an inſtance of one villain who tried all he could (except murder) to get himſelf hanged, but he could not effect it.—He

once

once ſucceeded ſo far, as to be *tied up* to the gallows at *Tyburn*; where an old comrade of his, juſt as the cart was going to be drawn away, called out to the *Sheriff*, that, "the man was innocent of the "fact for which he was going to "be executed, and that he (the "ſaid old comrade) actually com-"mitted the robbery himſelf, and "hoped that the *Sheriff* would not "execute a man wrongfully." The *Sheriff*, very humanely, ſtopped the execution, and ſent an account of this to the Secretary of State's office: an order came, to carry the man back to *Newgate*; from whence he was ſoon after diſcharged. Thus was the famous

famous *Patrick Madden* preſerved for future miſchief. His friend was hanged for a robbery the very next ſeſſions.

After this, *Patrick* was tried for a very dreadful riot in *Moorfields*, and ſentenced to ſeven years impriſonment in *Newgate*; was releaſed from thence in the riots of 1780—he then went on with burglary and houſe-breaking, and took young fellows under his tuition, to bring them up to his vocation. —On one of his expeditions, with his pupils, into a ſhop, which they robbed, he was diſcovered, taken, and capitally convicted. Notwithſtanding this, he was reprieved for *tranſportation*—he was afterwards

wards found at large, and tried for returning from tranſportation—of this he was convicted, and again received ſentence of death—he was *reprieved* again to be tranſported—when on board the ſhip, he made an hole in the bottom of it, and in the confuſion which this occaſioned, he got on ſhore—was retaken, and brought to the bar at the *Old-Bailey*—where, inſtead of being remanded to his former ſentence, he was told that he muſt be ſent abroad.—He refuſed to accept this, "unleſs "they uſed him better, while he "ſtayed in Newgate; for," he ſaid, "they had chained him to "the floor, and if he was not to

"have

"have more liberty, he would not "accept of the offered mercy." The (then) *Recorder* told him, that he ſhould be executed as that day ſe'nnight. This abated the hero's obſtinacy and courage, brought him on his knees, and made him ſue, in the moſt abject terms, for mercy. This was granted him.—After this, he was reimbarked for *Africa:* ſince which, various have been the reports concerning him. Some have ſaid, that he was hanged at the yard-arm, for mutiny on board the ſhip at ſea. — Others ſay, this report was groundleſs—for that he has ſince been ſeen at large in *England.*—What the truth is, I know

not—but this every body muſt know, that *one* inſtance of this ſort, muſt tend to harden more villains, than the execution of fifty people can diſmay. It carries with it an inſtance of *partiality*, that is horrible in itſelf, as well as a very high reflection on the diſtributive juſtice of this country, which will not, and ought not eaſily to be effaced.

The account which is above given of this malefactor, I confeſs to have recollected from the public prints; and, although they are not always to be depended on with reſpect to particulars, yet, in general, I believe the above account to be true, having had a confirmation of the ſubſtance of

it, from perſons well acquainted with this ſort of tranſactions.'

The matter of *reprieve* is tranſacted differently in *London* and *Middleſex*, from what it is on the circuits. In the former, the criminals, after ſentence, are remitted to the gaol, where they remain undetermined as to their fate, till the Recorder has made his report of their ſeveral caſes to his Majeſty in council. During this interval, the various connections which the convicts have formed in life, as well as their natural friends, all ſet to work—one has, perhaps, a brother who is ſervant to ſome Member of Parliament, or a ſiſter who is miſtreſs to ſuch a one,

a one, or perhaps to ſome greater man; in ſhort, the *higher powers* are got at; and, by ſome means or other, the royal ear is abuſed—the royal mercy extended to the greateſt villainies — and "reſpites, during his Majeſty's "pleaſure," reduce the number of names in the dead-warrant to about one third of the capital convicts—theſe are hanged—the reſt frequently, of late years, ſent for further inſtructions, in all kinds of the moſt dangerous villainies, on board the *hulks* in the river Thames; till, at the expiration of their time, they come forth, abandoned to the laſt degree—no creature can think of employing them,

and now their moſt accompliſhed wickedneſs is to be let looſe on the innocent public; and, edged with deſperation, no ſtreet, no road, no houſe, is ſafe from their terror.

In the ſeveral counties where the aſſizes are held by the Judges on the circuits, reprieves are the immediate act of the *Judge* himſelf; who muſt know the truth of every caſe that he tries, ſo that he cannot be impoſed on by miſrepreſentation, or by falſe report: and this renders him the more inexcuſable to the public, if he reprieves improperly. He has no power to alter the ſentence from one thing to another, as from hanging

hanging to tranſportation: but he has a power to reprieve, which (that the criminal may ſuffer as little even in mind as poſſible) his Lordſhip uſually does—"*before* "*he leaves the town:*"—he then ſends a recommendation to the Secretary of State's office, of ſuch and ſuch perſons, as fit objects of his majeſty's mercy; this is repreſented to the king, by whoſe command a letter is addreſſed to the Judges of the next aſſize for the county, ordering ſuch and ſuch to receive his majeſty's mercy, on condition of tranſportation, going to the hulks, or as the matter is, according to the report ſent by the Judge. Whatever this may

be, the end of the law is defeated —juſtice is laughed at—and the honeſt part of the king's ſubjects muſt ſuffer for the *injuſtice* and *folly* of ſuch *reprieves*.

It has been before obſerved, that ſome Judges have reprieved, for many offences made capital by the law, ſuch as horſe-ſtealing *, ſheep-

* I have juſt ſeen a printed *hand-bill*, from *Chertſey*, in the county of *Surrey*, ſigned by many *gentlemen* and *farmers*, complaining (as well they may) of the *daily increaſe* of SHEEP and HORSE-STEALING; and offering a reward of *twenty pounds*, to any perſon who ſhall be the means of convicting an offender.

This is one of thoſe inſtances, which prove, how ſeverely theſe miſchiefs are felt

ſheep-ſtealing, and the like, becauſe it is againſt their *conſciences* to take men's lives away for ſuch offences as theſe. But how do ſuch men's *conſciences* diſpenſe with their ſolemn *oath of office?* They are here brought into a very ſerious dilemma—they have ſworn ſolemnly to execute the laws, but their *conſciences* won't let them do this,—What then becomes of their *oaths*, which are given as ſecurities to the public for the due execution of juſtice? Such a Judge ought to reſign his place, and not

felt by the *public*; as well as how great a cauſe that *public* has to complain, of thoſe who turn ſuch *miſcreants* looſe upon their fellow-ſubjects.

trifle thus with the law, with himſelf, and with his fellow-ſubjects, in matters of ſuch weighty conſequence.

What laws ought to be made, is the province of the legiſlative power alone to determine: but when once made, the executive magiſtrate is not to arrogate to himſelf an authority over them, ſo that they ſhall, or ſhall not, operate, according to the will and pleaſure of an individual.—If the law be too ſevere in the opinion of the Judges, yet, it is plain that the legiſlature, when they paſſed it, thought otherwiſe, elſe it had not been made. But be the law what it may, none are anſwerable

for

for it, but thoſe who make it; none are anſwerable *to* it, but thoſe who violate it; and none are criminal, as to the diſpenſing it, but thoſe who do not diſpenſe it, fairly and impartially, to all, who are the plain, clear, and determinate objects of it.

It was worthy the underſtanding and policy of a low thief, to ſay to *Judge Burnett*, once, at *Hertford* aſſizes—"My lord, it is very "hard to hang me for *only* ſteal-"ing a horſe."—It was worthy the good ſenſe and wiſdom of that learned Judge, to anſwer—"Man, thou art not to be hanged "*only* for ſtealing a horſe, but "that horſes may not be ſtolen."

—This

—This anſwer I could wiſh the Judges to carry with them, whenever they go the circuit, and to bear it in their minds, as containing a wiſe reaſon for all the penal ſtatutes which they are called upon to put in execution: — it at once illuſtrates the true grounds and reaſons of all capital puniſhments whatſoever—namely, that every man's property, as well as his life, may be held ſacred and inviolate.—This, thank God! is, in this country, the conſtant care of the legiſlature, and whoever counteracts this, deprives us of our common birth-right.

What is the end of all puniſhment? "To deter men," ſays the great

great *Judge Hale*, "from the "breach of laws, ſo that they may "not offend, and ſo not ſuffer at "all. And is not the inflicting "of puniſhment more for exam- "ple, and to prevent evil, than to "puniſh?" "and therefore," adds he, "death itſelf is neceſſary to "be annexed to laws in many "caſes, by the prudence of law- "givers, though poſſibly beyond "the ſingle merit of the offence "ſimply conſidered."

The real difference between a *ſevere* Judge (i. e. a *Judge*, who, with a view to prevent evil, ſuffers the law to take its courſe—for ſuch a one is very commonly, though very injuriouſly, called *ſevere*) and a *mer-*

a *merciful* Judge (i. e. one who "*reprieves all before he leaves the* "*town*") is this—the *former* is a terror to thieves, the *latter* to honeſt men:—which of theſe characters may feed a low pride of *popularity* among the unthinking vulgar, and particularly among the ſeveral gaols of the kingdom, we may eaſily determine—but which of theſe eſtabliſhes peace and contentment of mind in a man's own breaſt, and deſervedly gains the eſteem and approbation of all thinking, honeſt, virtuous, and good men, is, I am afraid, too little thought of, by ſome of thoſe whom it moſt concerns.

As for the ſtrange ſuppoſition, that

that thieves don't mind *hanging*, it is too abſurd almoſt to require a ſerious anſwer. However ſtupid their minds may have grown, however hardened by the daily practice of wickedneſs, with reſpect to *others*—yet there is a certain principle, which is very rarely eradicated, and that is a principle which reſpects *themſelves*, I mean, SELF-PRESERVATION.—The fear of death applies to this, and immediately ſets it to work, either more or leſs, according to the apparent danger which threatens: and I will be anſwerable for it, that there is no poſſible puniſhment which could be deviſed, ſhort of death, or even that, if it held out only

only a faint chance of life, which the moſt daring thief would not thankfully accept, while under ſentence of death.

I remember to have red an account, which very fully ſerves to illuſtrate the above poſition; and of which the following is the ſubſtance, as well as I can recollect.—Many years ago, ſome ingenious perſon found out, what was called, a moſt ſovereign *ſtyptic*; it was ſaid to be ſo efficacious, that no *hæmorrhage* could reſiſt its power to ſtop bleeding. The inventor had tried it upon the amputated limbs of dogs, horſes, aſſes, and other wretched animals, who were choſen to be the ſubjects of his

inhuman experiments. It was then recommended to the obſervation of the hoſpital-ſurgeons, under a notion of ſucceeding better than the uſual methods of taking up the veſſels in caſes of amputation, beſides the advantage it held forth, of ſaving the patients the excruciating torments which they endure from the uſual practice of taking up and tying the veſſels. However, the moſt eminent ſurgeons then in England did not chuſe to venture the experiment on their hoſpital-patients; ſo that, after ſeveral applications to them, from the inventor of the ſtyptic, they declined ſubſtituting, what to them appeared an *uncer-*

tain,

tain, for what they ſo long had found a *certain* method of ſtopping blood on the amputation of limbs.

At length the *inventor* found means of applying to the king, (GEORGE II.) and to get a pardon for a criminal then under ſentence of death in Newgate, on condition that ſuch criminal would ſubmit to an amputation of the thigh, in the thickeſt and largeſt part thereof, and to have nothing but the ſtyptic applied to ſtop the bleeding.

There were, at that time, ſeveral convicts, (if I remember rightly, ſeven or eight)—theſe were applied to, and each of them earneſtly

neſtly petitioned to be the man on whom the experiment ſhould be tried.—How this was decided I forget; whether by lot—or by leaving it to the *inventor* of the *ſtyptic* to chuſe the man, who, from his appearance of health, and ſtrength of conſtitution, might be ſuppoſed to give the medicine the faireſt chance—or however elſe it might be determined, the choice fell on one *Chippendale*, who choſe to undergo a moſt horrible operation, with a bare chance of life, rather than meet a certain death, which, in point of bodily pain, could not be a thouſandth part of what he choſe to ſuffer, for even the precarious hopes of life.

As ſoon as the man was fixed on, the ſurgeons were deſired to be preſent at the operation, for which a day was to be appointed; but they all refuſed this, as well as to try the ſtyptic in the hoſpitals, though it might ſucceed in the caſe of this man, or even of more; alledging, that they could not anſwer it to themſelves, or to the public, if they ſhould happen to loſe a patient, by even an accidental failure of the ſtyptic; and therefore, they were determined to proceed in the old method.

There was much altercation about this affair; and, at length, it ended in the fellow's ſaving both his limb and his life; for, as the

end of the experiment would not have been anſwered, by inducing the ſurgeons to try it in the hoſpitals, the inhuman operation on the criminal was interdicted, and he was diſcharged out of confinement, having, on his part, performed the condition of his pardon, by offering himſelf to the propoſed operation.

One *fact* proves more than many *arguments*; and that perſon muſt know little of human nature, who can doubt, whether, if the ſame offer were to be made again to a gaol-full of capital convicts, they would not readily conſent to ſave their lives at the expence of their limbs.

The legiſlature has therefore

annexed *death* to the commiſſion of certain crimes, as the moſt terrible of all puniſhments, and, of courſe, as the moſt likely means to ſtir up that horror in men's minds, which may deter them from perpetrating the evils that otherwiſe they would commit. That all this wiſe and ſalutary intention of the law is counteracted, and, in a great meaſure, defeated, by the ill-timed lenity of the Judge, is very true; but then, inſtead of ſaying, that "men don't "mind *hanging*, and therefore "ſome other mode of puniſh-"ment ſhould be adopted,"—let it rather be ſaid, that "they don't "much mind a *chance* of hanging, "which is twenty to one in their "favour,

"favour, and therefore let the "law be ſo executed, as to leave "nothing but a *certainty* of ſuffer- "ing if they offend, and then the "law will have its effect."

Our law is not like the law of *Turkey*, which, in many caſes, owes its exiſtence, as well as its puniſhments, to the will and pleaſure of a *Baſhaw* or a *Cadi*—and that, *ex poſt facto*, or after the commiſſion of an offence:—but it is the glory of the Engliſh laws, that they, and the puniſhments which they inflict, are known and certain, as they ſtand in the law; therefore the robber knows beforehand what the law gives him to expect, and ſo leaves him without

excuſe, if he makes himſelf an object of its puniſhment—he has nobody to complain of but himſelf. On the other hand, if the law, known and publiſhed as it is, be not executed, ſo that the puniſhments which it threatens become mere *bruta fulmina*, and perſons are drawn into miſchiefs from the hopes of impunity—tho' they cannot reaſonably complain of the law, yet they have much reaſon to complain of thoſe whoſe duty it is to diſpenſe it.

Lord Bacon ſays, ſomewhere—that—"It is no matter what the "law is, ſo it be known what it "is."—Still, let the law be ever ſo plain and determinate as to itſelf,

if it be rendered *precarious* in its execution, and only put in force now and then, according to the temper, diſpoſition, or humour of the *Judge*, it is thus (virtually at leaſt) rendered *uncertain*, and may, with much ſhew of reaſon, be looked upon as very oppreſſive towards the comparatively *few* who ſuffer by it—the *many* who eſcape will laugh at it; and in a ſhort time be brought to ſet it at open defiance; while the Public, for the defence, protection, and preſervation of which, it was made, have only to lament, that the ill-execution of the law, leaves mankind in little better condition, than if there was no law at all.

And this ſeems to be the caſe at this very hour. What is more melancholy ſtill, is, that robberies of all kinds are on the increaſe; and to no other fair reaſon can this be attributed, but to the increaſe of *reprieves*:—theſe, in the very nature of things, muſt weaken the *terror* of the *law*, and in proportion as they do this, muſt embolden and harden men to commit outrages, of the moſt diſaſtrous kind, upon their peaceable fellow-ſubjects.

" No man of common huma-
" nity, or common ſenſe, can
" think the life of a man and a
" few ſhillings to be of an equal
" conſideration, or that the law,

" in

" in puniſhing a thief with death,
" proceeds (as perhaps a private
" perſon ſometimes may) with
" any view to vengeance. The
" terror of the example is the only
" thing propoſed, and one man is
" ſacrificed to the preſervation of
" thouſands.

" If therefore the terror of this
" example be removed (as it cer-
" tainly is by frequent pardons)
" the deſign of the law is ren-
" dered totally ineffectual — the
" lives of the perſons executed
" are thrown away, and ſacrificed
" rather to the vengeance than to
" the good of the public; which
" receives no other advantage,
" than by getting rid of a thief;

" whoſe

" whoſe place will immediately
" be ſupplied by another. Here
" then we may cry out with the
" poet *(Claudian)*

——*Sævior enſe*
Parcendi rabies.

" This I am confident may be
" aſſerted, that pardons have
" brought many more men to
" the gallows than they have ſav-
" ed from it. So true is that ſen-
" timent of *Machiavel*, that ex-
" amples of juſtice are more *mer-*
" *ciful* than the unbounded exer-
" ciſe of pity." See Fielding's Incr. of Rob. p. 120.

Upon the whole, ſomething ſhould be done, or much worſe conſequences, than have hitherto happened,

happened, are to be apprehended*; and I ſhould be very ſorry to ſee certain perſons, who have this matter much at heart, forced into a petition to the Houſe of Commons, "complaining of an undue adminiſtration of criminal

* The *St. James's Chronicle* of November 9th, 1784, obſerves, that — "If robberies continue to increaſe, as they have done for ſome time paſt, the number of thoſe who rob will exceed that of the robbed."

The author of the above paragraph may have credit given him, for meaning to ſpeak *hyperbolically*; but, as things are going on at preſent, the *hyperbole* is a very allowable one — for, he obſerves, that — "Every day, every hour, teems with intelligence of houſes broken open, carriages ſtopp'd on the highway, and perſons

nal juſtice, and praying that a committee may be appointed to examine into the conduct of the *Judges* on their ſeveral circuits, with reſpect to *reprieves* of capital convicts; that the ſeveral clerks of aſſize may lay before the ſaid committee, the names and crimes of ſuch convicts,

" ſons plundered and abuſed. Theſe out-
" rages are frequently committed early in
" the evening, and in the open ſtreets of
" the *metropolis*."

Whatever other cauſes may be aſſigned for this, the grand cauſe of all, is, the almoſt total relaxation of diſcipline among us; or, in other words, the turning ſo many hardened villains looſe upon the public, by the frequency of reprieves after judgment.—This invites others out, ſo that they increaſe in numbers as well as in audaciouſneſs.

with

with all books and papers relative thereto, &c."—On the report of ſuch a committee to the Houſe, the matter might then be inveſtigated at the Bar of the Houſe, in ſuch a way, as to create univerſal caution among the diſpenſers of our criminal laws, and to leave the public no more cauſe to complain, that we are at preſent very little better protected in our properties, than if we had lived among the old *Ægyptians*, who held all manner of *thefts* to be *lawful* *.

Our *police*, as far as it relates to the diſcovery and apprehenſion of felons, is now on ſuch a footing,

* See *Aul. Gellius*, Lib. ii. cap. 18.

that

that no thief, or neſt of thieves, can long be ſafe. The plan of a public office, open at all times for the examination and commitment of offenders, is of the greateſt uſe. This was firſt deviſed by the late *H. Fielding*, Eſq;—much improved on by his late brother *Sir John Fielding*—and is now carried on, in a ſtill improved ſtate, by *Sir Sampſon Wright*, and other gentlemen his aſſiſtants, in *Bow-ſtreet*. There are other *rotation offices* *, all

* So called from the magiſtrates ſitting *by turns* at a known place; ſo that there are always ſome preſent to do the public buſineſs:—this, I believe, has always been the cuſtom in the *City* of *London*, where the *Aldermen* ſit on juſtice-buſineſs by rotation at *Guildhall* every day.

This

all of which contribute their quota of uſefulneſs to the public; and, by means of the number of officers employed by them for the apprehending thieves, I much queſtion whether a thief can be much ſafer in *England*, even in *London* itſelf, from the hands of the thief-takers, than he would be from thoſe of the *Marechauſſée* or *Guet* in *France*.

Our gangs of thieves are grown too numerous, and the individuals which compoſe them too deſpe-

This is a moſt ſalutary inſtitution, and muſt tend to expedite juſtice. But quere —If this would not be very highly improved on, if there were *Judges* to ſit in the ſame manner, to try the offenders as ſoon after their commitment as poſſible?

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rate and dangerous, to be controuled by the comparatively feeble powers of the private magiſtrate, or of the common parochial conſtable. A ſteady execution of the laws might have preſerved things on a better footing; but they are now come to ſuch a paſs, that nothing but active magiſtrates, who devote their whole time to the one ſingle object of the police—and bands of ſtout, able, and reſolute officers, whoſe only buſineſs is to execute the warrants of thoſe magiſtrates—can inſure any tolerable quiet to the metropolis and its *environs*. Without theſe, there would be no living—therefore, they certainly are peo-

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ple to which the public is very highly obliged.

But how mortifying is it to think, that, after all the care, trouble, hazard, and expence, in the apprehending capital offenders, by the inferior magiſtrates, and officers of the police, theſe villains are uſually caught, only to be turned looſe again, either from gaol, or from the lighters, ſtill more determined and deſperate, as to every ſpecies of felonious miſchief! This is ſo much the caſe, that it may be aſſerted, with great truth, though at the ſame time with no ſmall ſcandal to the government, that there are many offenders, now at large, in the

kingdom, who are as well known at the rotation offices, for having been tried and convicted of ſome capital crime or other, as *St. Paul's* clock is known for ſtriking the hours.

I am rather deviating from my deſign in theſe pages, by entering on the tranſactions of the police in the metropolis; but as theſe are very much connected with the buſineſs of the aſſizes, in the home counties eſpecially, I could not paſs them by.

Suffice it to ſay, that, if there were the ſame care taken to execute the laws in the *higher* departments of magiſtracy, as there is in the *lower*, ſuch a check muſt be

be given to the licentiouſneſs of robbers, as ſoon to bring on a new face of things. We ſhould almoſt have to ſay—*redeunt Saturnia regna*:—What can effect this, but ſuffering the laws to take their courſe againſt thoſe who are now ſetting them at defiance —and thus vindicating them from the reproach of thoſe who revile them, as inadequate to the purpoſes for which they have been made?

One obſervation I muſt conclude with, which is—that all writers on the ſubject of laws, that I have ever met with—as *Plato*, *Cicero*, &c. among the antients; *Monteſquieu*, the *Marquis* of *Beccaria*

caria, &c. among the moderns—all contend for the certainty of puniſhment, in order to render laws reſpected and efficacious. The ſame reaſon for which a law is enacted, muſt certainly call for the certainty of its execution; for to enact a law, and not to enforce the execution of it, is againſt all reaſon.

I have profeſſedly avoided entering upon the queſtion—how far it might be expedient to reviſe our penal ſtatutes, relative to capital offences? but, as a friend to examination and reviſal of all kinds, I ſhould not be ſorry to hear that ſuch a thing was in agitation; for, if any of the laws in being

being fail of their execution, and conſequently of their end and purpoſe, becauſe they are thought too ſanguinary, they had much better be altered into ſomething leſs ſevere, than to let thoſe offences, which are the objects of them, go without any puniſhment at all.

However, this is a matter wholly for the conſideration of the legiſlature; I ſhall therefore diſmiſs it, with my hearty good wiſhes, that if ever it be done, it may be productive of all that benefit to the public, which the warmeſt advocates for ſuch a meaſure can expect or deſire: at the ſame time expreſſing my own doubts, whether any other human ſyſtem

could equal the preſent, for the ſuppreſſion of public injury, ſuppoſing the law as it now ſtands were punctually executed. We then might ſay——

The law hath not been dead, tho' it hath ſlept:
Thoſe many had not dar'd to do that evil,
If EV'RY MAN, *that did th' edict infringe,*
Had anſwer'd for his deed: now 'tis awake;
Takes note of what is done; and, like a prophet,
Looks in a glaſs that ſhews what future evils
(Either now, or by remiſſneſs new-conceived,
And ſo in progreſs to be hatch'd and born)
Are now to have no ſucceſſive degrees,
But, ere they live, to end.

See SHAKESPEARE, Meaſ. for Meaſ.

PART

PART II.

AS it is to the purpoſe of theſe papers, I would obſerve, that the *petty juries*, who are to ſtand between the Crown and the priſoners, notwithſtanding the ſolemn *oath* by which they are bound, frequently acquit priſoners, in the very face of the cleareſt and moſt indiſputable evidence.

The oath of a petty juryman is as follows, viz. " You ſhall well " and truly try, and true deliver- " ance make, between our Sove-

" reign Lord the King, and the " priſoner" (or priſoners) " at " the bar, whom ye ſhall have in " charge, and a true verdict give " ACCORDING TO THE EVIDENCE. " —So help you GOD."

The words of this ſolemn adjuration are very plain and intelligible to the meaneſt capacity, and very clearly point out to the juryman the whole of his duty. They confine his attention to the *evidence* before him, and they bind his conſcience to deliver his verdict, ſimply, according to the conviction which *that evidence* works upon his mind.

Inſtead of this, juries frequently take upon themſelves to give verdicts

verdicts diametrically oppoſite to the evidence which has been delivered. I have often obſerved this, with much uneaſineſs; and indeed, that man, who can hear *twelve* people *perjure* themſelves, and not be affected by it, muſt, one ſhould think, be void of all feeling, of all *proper* feeling, at leaſt, whatſoever.

For inſtance. A priſoner is ſet to the bar, and put upon his trial. The witneſſes uniformly, and without a doubt, prove the *fact* againſt him. But perhaps he happens to be young—it appears to be his firſt offence—he has, before the fact which is proved againſt him, had a good character — he was drawn

drawn in by others—was in liquor —or ſome other circumſtance of the like kind ſtrikes the minds of the *jury*; they forget their oath— "to give a true verdict accord- "ing to the evidence"—and take upon themſelves to *acquit* the priſoner, againſt all *fact* and *truth*. This I have ſo often ſeen, that I cannot forbear the mention of it. The Judge, on this occaſion, uſually takes little further notice of the matter, than to congratulate the priſoner on "his narrow eſcape," and to tell him that "he "has had a very *merciful* jury.

That ſuch an acquital as this is owing to the *perjury* of the *jury*, is beyond a doubt: they have given

a verdict

a verdict *according* to their *feelings*, but *againſt* their *oath*. This may be a very dangerous buſineſs to the public; for if a jury can give a *falſe* verdict in *favour* of a priſoner in one caſe, they may alſo give a *falſe* verdict, in another, in *prejudice* of the party accuſed. If through *favour* they acquit, through *prejudice* they may convict *; and if ſo, their oath, which is

* This I remember to have happened, in a very remarkable caſe, of a perſon of fortune, who was *maliciouſly* indicted for ſtealing *turkies*, and as *maliciouſly* convicted, at a certain *general quarter ſeſſions* held in the borough of *Southwark*. To behold a venerable figure of an old gentleman, above ſeventy years of age, ſtanding

is to be looked upon as the grand ſecurity to the public, as far as *juries* are concerned, is a nugatory piece of form.—I have obſerv-

ſtanding at the bar, as a common *felon*, was, in itſelf, an afflicting ſight—but to ſee a *jury* capable of convicting him againſt *law*, as well as *fact*, contrary to the ſenſe and direction of the court, was ſtill more afflicting.

It ſeems, that this old gentleman was a good deal diſliked in his neighbourhood; and there being, unfortunately, ſome of the *jury* literally *de vicineto*, they influenced the reſt to find him *guilty*, and to perſiſt in their *verdict*, though ſent out of court to re-conſider it.

This matter ended in an unanimous petition to our moſt gracious Sovereign, ſigned by all the magiſtrates, expreſſing their diſapprobation of the verdict; which procured a pardon for the *defendant*.

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ed this in ſo many inſtances, that, conſidering what ſort of people *petty jurymen* uſually are, it ought to be looked upon as a part of the *Judge*'s duty, to give them a proper *charge*, as ſoon as they are ſworn; to warn them againſt trifling with their oaths; and to hold up the evidence given to them, as the *only* matter which they are to conſider. If any party tried before them appears, from ſome alleviating circumſtances of his caſe, to be an object of mercy, they may recommend him as ſuch to the *Judge*'s conſideration, but ought on no account to violate their *oath*, from any motive whatſoever.

The *grand jury*, which is uſual-

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ly compoſed of gentlemen of rank and education, and who muſt, from theſe cauſes, as well as from their repeated ſervices, be preſumed, in a good meaſure at leaſt, to know their duty, always receive a *charge* from the *Judge*: how much more neceſſary is it for the *Judge* to inſtruct the *petty jury* in their duty, as they uſually conſiſt of low and ignorant country people!

Another cauſe of much evil is, the trying priſoners *after dinner*; when, from the morning's adjournment, all parties have retired to a hearty meal; which, at *aſſize-time*, is commonly attended, among the middling and lower

ranks of people, at leaſt, with a good deal of *drink*. The ſymptoms of this vulgar ſpecies of feſtivity are uſually too apparent, when the court aſſembles in the *afternoon*—the noiſe, crowd, and confuſion, which theſe occaſion, ſeldom coſt the *Judge* leſs than about an hour, before the court can be brought into any kind of order; and when this is done, drunkenneſs is too frequently apparent, where it ought of all things to be avoided, I mean, in *jurymen* and *witneſſes*. The heat of the court, joined to the fumes of the liquor, has laid many an *honeſt juryman* into a calm and profound ſleep, and ſometimes it has been no

ſmall

ſmall trouble for his *fellows* to *jog* him into the verdict—even where a wretch's *life* has depended on the event!—This I myſelf have ſeen—as alſo *witneſſes*, by no means in a proper ſituation to give their evidence.

The remedy for theſe things would be very eaſy, as well as pleaſant to the court: and that would be, to ſit *early* in the *morning*, and to make but *one* ſitting for the day — ſuppoſe *ſeven* in *ſummer*, and *eight* at the *Lent* aſſizes.—The *Judge* might try more priſoners, and do more buſineſs with comfort to himſelf, by theſe means, than by the uſual adjournment, and having the confuſion

and

and diſorders of the re-aſſembled court to combat with. He might ſit till *five* in the evening in the Lent circuit, and till *ſix* in the ſummer: which, by ſome refreſhment brought to him into court, might be done, with leſs fatigue, and more ſatisfaction, as well to himſelf, as to all parties concerned, than can be derived from the preſent uſual, but inconvenient method of proceeding.

Every body muſt ſee and know, that an *aſſize-town* is the common *rendezvous*, not only of many who have buſineſs there, but of *more* that have none; and that the majority of the *latter* is compoſed of the low rabble, gathered from

within ſome miles of the place, for the purpoſe of making holiday. It is by this ſort of perſons that the crowd is made; and when they wax drunk, which they ſeldom fail to do by the *evening*, their noiſe is intolerable, their rudeneſs hardly reſtrainable, and their curioſity *will* be ſatisfied, by their forcing themſelves into and about the court, which they fill with "the moſt villainous com-"pound of ill ſmells that ever of-"fended noſtril." — The ſcheme of making but one ſeſſion in the day, and of adjourning early in the evening, would prevent all this, as well as maintain that *decorum*, with which a due reſpect to a court

of

of juſtice is ſo intimately connected.

There has of late years been a law made *, for "preſerving the "health of priſoners in gaol, and "preventing the gaol diſtem-"per." A very neceſſary and excellent ſtatute it is; but there is a part of it, which, by too ſtrict and literal an obſervance, may bring ſome inconveniences on the public. This law ſays — that the Juſtices, in their quarter ſeſſions, "may order cloaths to be provid-"ed for the priſoners when they "ſee occaſion." It is therefore now become cuſtomary, to take

* 14 Geo. III. cap. 59.

off the priſoner's own cloaths, and put him on a dreſs like a carter's frock; and in this habit he is brought on his trial—the reaſon of which is ſuppoſed to be, that the *Judges* and *court* may be ſecure from all danger of the *gaol diſtemper*, which might poſſibly be communicated by the cloaths of the priſoner: this, ſuppoſing there be any infectious diſorder in the gaol, may be a wiſe and ſalutary precaution — but I have known it often done, when, as appeared by the certificate of the county-ſurgeon, purſuant to the ſaid act, there has been no *gaol* or other *infectious diſorder* whatſoever.

ver. There can be no reaſon, when this is the caſe, to change the priſoner's apparel, or diſguiſe him when brought up to trial; but there are very ſtrong reaſons why this ſhould be avoided, for the ſake of juſtice. The proſecutor and witneſſes may be much puzzled to know a man, when diſguiſed in a carter's frock, ſo as to be able to ſwear to him; his dreſs when he committed the fact ſhould therefore, if poſſible, be that in which he ſhould ſtand at the bar, as moſt likely to mark the identity of the priſoner.

I have ſeen a number of men arraigned in their own cloaths,

and the *Judge* has ordered them to be brought to their trials, as they ſeverally ſhould come on, in the cloaths of the gaol, which are uſually (as has been ſaid) carter's frocks. I obſerved, that theſe made ſuch a difference in the appearance of the priſoners, that I hardly knew them again; this, however immaterial to a ſtander-by in court, is yet very material to thoſe who are to appear as witneſſes in the cauſe, and who may be very much embarraſſed in their teſtimony, reſpecting the identity of a perſon under ſuch different appearances; for, not only the cloathing is different in ſhape and colour, perhaps, but the perſon

and ſtature ſeem to a great degree altered by it.

When therefore there is no reaſon for it, ſurely ſuch a diſguiſe ſhould be omitted.

It may not be foreign to our purpoſe, to make ſome obſervations on another, and more important method of *eſcape* for *thieves*, when put on their *trial*. The *facts*, charged againſt them in the *indictment*, are then to be made out by *legal* teſtimony.

It often happens, that *robberies* are committed by *more* than *one* offender—that the *proſecutor* is able to ſwear poſitively to the fact, and to all its circumſtances, as well as to the *number* of villains who

committed it; but can't bring it home to the *priſoner*, not being able to *identify* him by ſwearing to his *perſon*; ſo that, for want of ſome direct and poſitive teſtimony againſt him, the *offender*, however great a villain, is *acquitted*.—To remedy this ſore evil, it has been found neceſſary, and it is cuſtomary, to admit one of the *accomplices* an evidence for the Crown; but it is uſual to reject the *accomplice* from being a witneſs, unleſs ſome other teſtimony appears, to put the priſoner on his defence, by way of inducement, or introduction, to the *accomplice's* evidence.

As this is a very ſerious matter, and big with the utmoſt diſtreſs

and

and danger to ſociety, it may be worthy our attention.

Let us firſt obſerve, in general, that there are certain *legal* objections, which may be made to a witneſs; *ſome* of which go to his *competency*—*others* to his *credit*.

By the *firſt* of theſe, he cannot *legally* be ſworn as a *witneſs*; as where he is a *felon* convict, or has been convicted of *perjury*, or ſtood in the *pillory* for ſome infamous crime, or the like, or is *intereſted* in the cauſe—ſuch a one is *incompetent* to be a *witneſs*, and therefore muſt be totally ſet aſide.

But though the *witneſs* be under none of the *above*, or any *other* diſabilities, with reſpect to his *competency*;

competency; yet there may be many circumſtances, which may tend, very ſtrongly, to impeach the truth and *credibility* of his teſtimony—as, if he prevaricates, or contradicts himſelf in what he ſays—or is in a different ſtory at different times—or appears to be a perſon of bad fame—or betrays any heat or malice againſt the priſoner: in theſe, and many other particulars, a witneſs ſtands greatly impeached in his *credit*; and the *jury* ought to be cautioned againſt truſting him, unleſs ſome very ſtrong and probable circumſtances appear, in favour of his teſtimony againſt the *priſoner*.

Now,

Now, what is the caſe of an *accomplice?*—If he be not rendered *incompetent*, by ſtanding under ſome *legal* diſability, he cannot neceſſarily be rejected as an inadmiſſible *witneſs*, though no other ſhould appear to charge the *priſoner*.

How far the teſtimony of an *accomplice*, as immediately affecting the *priſoner*, is to be *credited*, is a matter to be left, like *all other* teſtimony of *all other* men, under the direction of the learned *Judge*, to the *jury*. The predicament under which the *accomplice* ſtands, muſt go very ſtrongly againſt his *credit*, therefore every thing that he ſays ſhould be received

ceived with the utmoſt caution. The *manner* of giving his evidence, the *matter* of it; the conſiſtency or inconſiſtency, as well as the probability or improbability, together with all circumſtances relative to it, are ſuch objects of even a common ſhare of underſtanding and diſcretion, as leave no room for either *Judge* or *Jury* to miſtake.

It has been ſaid—that, "an *accomplice* is an *intereſted witneſs*." If ſo, it goes to his *competency*, and he ought not to be ſworn *at all*, though twenty other witneſſes appear in the cauſe. But how is he *intereſted?* When once he is admitted an evidence, whatever be

be the fate of that evidence, he is ſure to be ſafe; unleſs, perhaps, he be detected in open falſehood, and then he may ſuffer: if, therefore, he can be ſaid to be *intereſted* at all, it muſt rather be to ſpeak the *truth*, than, by prevarication and falſehood, to ſubject himſelf to detection and puniſhment.

" Under ſuch circumſtances, and under the caution of a good *Judge*, and the tenderneſs of an *Engliſh jury*, it will be highly improbable, that any man ſhould be wrongfully convicted; and utterly impoſſible to convict an *honeſt* man: for I intend no more, than that ſuch evidence ſhall put the *priſoner* on his *defence*, and oblige him

him either to controvert the fact, by proving an *alibi*, or by ſome other circumſtance, or to produce ſome reputable perſon to his character." — See *Fielding, Inc. of Robb.* p. 116.

The way in which *Lord Hale* * puts the matter is thus—"Tho' "a *particeps criminis* be admiſſible "as a witneſs in *law*, yet the *cre-* "*dibility* of his teſtimony is to be "left to the *jury*." Here this great man lays down the *law* as ſtated above, viz. that an *accomplice* is a *legal, competent* witneſs, and in law *admiſſible*. 2dly, That his credit ought to be left to the *jury*.—But if an *accomplice* be not

* Hale, Hiſt. Vol. i. p. 305.

admitted

admitted at all, how can the credit of his teſtimony be left to the jury? or how can the *jury* judge any thing concerning teſtimony, which they are not permitted to hear?—His *Lordſhip* proceeds—"And truly it would be hard to "take away the life of any per-"ſon, upon ſuch a witneſs that "ſwears to ſave his own, and yet "confeſſeth himſelf guilty of ſo "great a crime *, unleſs there be "alſo very conſiderable circum-"ſtances, which may give the "*greater credit* to what he ſwears."

* By this it is clear, that his Lordſhip did not at all mean to exclude the *ſingle* teſtimony of an *accomplice*, but to expreſs the proper caution with which it ſhould be received.

Here

Here that excellent *Judge* ſpeaks like himſelf, with that good ſenſe, tenderneſs, and humanity, for which he was remarkable. But there is a wide difference between the practice of *rejecting totally* the *ſingle* evidence of an *accomplice*, ſo as not even to put the priſoner on his *defence*; and the *taking away his life* on the bare evidence of an *accomplice*, without "any other very conſiderable cir-"cumſtances." The *former* muſt, in the very nature of things, contribute to the ſuppreſſion of *juſtice*, in the acquittal of the *guilty*; as, I freely acknowledge, the *latter* might tend to the deſtruction of the *innocent*.

What

What the learned *Chief Juſtice* ſays, of the *accomplice* "ſwearing to *ſave his own life*," appears to be more applicable to the abſurd and barbarous doctrine of *Approvers*, than to the cuſtom of later days—where an *accomplice* is *, *ex neceſſitate rei*, admitted an evidence: if the *approver* failed in

* The admiſſion of the *accomplice* as an evidence, is done for the ſake of bringing offenders to juſtice. It is a diſcretionary act of the *magiſtrate*, before whom the offenders are brought. If it appears to him, that the chief perpetrators of the *fact* cannot be *convicted*, unleſs an *accomplice* be admitted as evidence for the *Crown* againſt them, he uſually ſingles out one,

 that

in his charge againſt the *appellee*, in *treaſon* or *felony*, he himſelf was to be hanged; therefore he might be truly ſaid to ſwear to *ſave his own life*. But this is not the caſe of the *accomplice*, when admitted an *evidence* for the *Crown*: no ſuch conſequence is in the leaſt likely to attend him, whichever

that he thinks the *leaſt guilty* of the *gang*, for this purpoſe, and who appears to him to be well acquainted with the *fact*, as well as with the *identity* of thoſe who committed it, in order to ſtrengthen the otherwiſe deficient proofs againſt them.

The man thus admitted an *evidence*, is ſent to *gaol* till the next *gaol delivery*, and then is brought forth to give his teſtimony.

way the *verdict* goes; therefore he cannot be under the influence of ſuch an apprehenſion.

That an *hundred guilty* perſons ſhould eſcape, ſooner than *one innocent* perſon ſhould ſuffer, I readily agree—the very thought of *injured* innocence, and much more that of *ſuffering* innocence, muſt awaken all our tendereſt and moſt compaſſionate feelings, and, at the ſame time, raiſe our higheſt indignation againſt the inſtruments of it, as well as our utmoſt care to prevent it. But there is no danger of *either* from a ſtrict adherence to the laws. The admiſſion of *legal* evidence will tend to nothing elſe,

but to the diſcovery of truth; the judgment which is to be formed on that evidence, be it what it may, is to be the reſult of cool deliberation and reflection, and to be very cautiouſly determined.

Still, on the other hand, as the *public* muſt ſuffer very eſſentially from the eſcape of the *guilty*, it ſurely muſt be a *prudent* part, at leaſt, to hear what the *accomplice* has to ſay, ſo far as to put the priſoner on his defence—and more eſpecially, as no man can tell, what *lights* may be ſtruck out, or what *truths* may appear, from the teſtimony even of the worſt of men. I own, that

that the matter appears to me, like adminiſtering a medicine, which may poſſibly do *good*, without the leaſt probability of doing any *harm*.

I have written more on this ſubject than I at firſt intended; but its importance excuſes me to *myſelf*, and will, I hope, excuſe me to the *reader*. — As it is one of thoſe things, which give much encouragement to *thieves*, to perſuade themſelves that the evidence of an *accomplice* will not be admitted againſt them, provided they can conceal themſelves from the knowledge of others; and as every thing that can flatter them with impunity, increaſes

their numbers * and audaciouſneſs; I do hope and truſt, that what has been ſaid on this point, will be condeſcendingly attended to by THOSE WHOM IT MAY CONCERN. I know that they love to do right—they wiſh to do it:—to ſuch, *advice* is ever welcome, and even *reproof* itſelf will be received with thanks.

The times require, that every *legal* and *conſtitutional* advantage ſhould be taken, againſt thoſe who make themſelves a *public terror*, by openly waging war on the *public ſafety*; and no opportunity

* *Quod caput audaciæ eſt*, JUDICES! *quis ignorat, Maximam illecebram eſſe peccandi impunitatis ſpem?* CIC. *pro* Mil.

of

of making proper examples of them ſhould be loſt.

——The baſe degen'rate age requires
Severity, and juſtice in its rigour:
This awes an impious, bold, offending world,
Commands obedience, and gives force to laws.

ADDISON, CATO.

POST-

POSTSCRIPT.

WHILE the foregoing ſheets were in the preſs, and nearly printed off, I happened caſually to caſt my eye into the *ninth volume* of *Sheridan*'s edition of *Swift*'s works, and found a paper (p. 320) intitled, "The "laſt ſpeech and dying words of "*Ebenezer Elliſton*, who was exe- "cuted May 2, 1722. Publiſhed "at his deſire, for the common "good."—No man knew *human nature*, as it appears and operates in all ranks and conditions of men, better than *Swift*, and, of courſe,

courſe, we find *touches of the maſter* throughout the whole of this little performance: in none more than in the following *paragraph*; which, as it ſo fully coincides with the ſentiments in the preceding pages of this book, I will tranſcribe.

" From the knowledge I have " of my own wicked diſpoſition, " and that of my comrades, I give " it as my opinion, that nothing " can be more unfortunate to the " public, than the mercy of the " government in ever pardoning " or tranſporting us; unleſs when " we betray one another, as we " never fail to do, if we are ſure to " be well paid, and then a pardon

" may

" may do good: by the ſame rule,
" that it is better to have one fox
" in a farm than three or four.
" But we generally make a ſhift
" to return after being tranſport-
" ed, and are ten times greater
" rogues than before, and much
" more cunning.

" Beſides, I know it by expe-
" rience, that ſome *hope* we have
" of finding *mercy* when we are
" tried, or after we are condemn-
" ed, is always a great *encourage-*
" *ment* to us." &c. &c.

F I N I S.

ERRATA.

P. 36. l. *penult.* *after* priſon, *add,* and left for execution.

38. *at the word* news-papers, *add the following note.*

It may be ſuppoſed, that, at certain periods, the *gentlemen* of the *road* peruſe the *news-papers,* with as much avidity and diligence, as certain *gentlemen* of the *turf* peruſe the *racing-calendars*; and, as *theſe* are greatly ſurprized and alarmed when the *long odds* are loſt, and the *knowing-ones* taken in; ſo are the *others,* when they find ſome notorious *thief* left for *execution.*

P. 73. l. 9. *dele* that.

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